

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In re

Determination of Rates and Terms for
Digital Performance of Sound Recordings
and Making of Ephemeral Copies to
Facilitate those Performances (*Web V*)

Docket No. 19-CRB-0005-WR
(2021-2025)

WRITTEN DIRECT TESTIMONY OF

Mary Gauthier

Professional Musician, Recording Artist, and Songwriter

September, 2019

I. Background and Qualifications

1. My name is Mary Gauthier. I am a professional musician, recording artist, and songwriter.

I am providing testimony in this proceeding because I believe it is important that artists see an increase in royalty rates paid by noninteractive services that operate under the statutory license. Streaming services are now the dominant form of music consumption, and it is critical that they pay artists a fair royalty for the use of our music, so that artists can continue to create, continue to make a living, and continue to share their music with the world.

2. I was born in New Orleans, Louisiana and never knew my birth mother. I was born at St.

Vincent's Women and Infants Asylum, on Magazine Street, where I spent the first year of my life. I was adopted at about a year old, and grew up in Baton Rouge. My father struggled with alcoholism. Like my father, I also used alcohol and drugs—to try to sort through the trauma I experienced as a child. I did not know that this was what I was doing at the time, all I knew was that I was hurting and confused and getting high helped kill the pain. I also found refuge by listening to music. Every Friday night, I used to listen to the American Top 40 countdown with Casey Kasem on the radio in my room. There were so many types of music represented on Top 40 back then, and listening transported me to other places—and other peoples' stories.

3. At the age of fifteen, I stole the family car and ran away. The next several years were challenging. I abused substances that brought me comfort, often relied on friends for a place to sleep, and ultimately enrolled in and dropped out of college after five years. Finally, I moved to Boston, enrolled in culinary school, found some balance, and with the help of three investors was able to open my own restaurants, named Lunchbreak and Dixie Kitchen. Throughout this time, music continued to bring me solace. I connected on an

emotional level with singer-songwriters who delivered a message through their music, such as Bruce Springsteen, Patti Smith, and John Prine. I was always inspired by them and still am. One of my favorite songs was John Prine's "Sam Stone," about a veteran coming home from Vietnam, which became my greatest teacher when I started working with wounded veterans twenty odd years later, as I'll explain below. I got sober in 1990, after getting arrested on opening night of my second restaurant for driving under the influence.

4. As I deepened my recovery from drugs and alcohol, I started falling out of love with the restaurant business and cooking and falling deeper in love with music. Music gave me a sense of purpose in my life that cooking no longer did. Food feeds the body, but music feeds the soul.
5. Dixie Kitchen was very close to Berklee College of Music in Boston, and I would feed a lot of musicians. They showed me it was possible to be a working musician. One of the waitresses at my restaurant brought me to an open mic night at Club Passim in Harvard Square, and she played a couple of songs she had written, along with other singer-songwriters just getting started. The minute I saw her up there, I realized that was what I want to do. I wasn't sure that I would ever be able to make a living as a musician, but I knew I wanted to try.
6. I started writing songs in my mid-30s and it became an obsession. I made a cassette demo, then I made a CD, which was nominated for a Boston Music Award for Best New Artist. I made another CD, and got booked to play at over a dozen folk festivals around the country. I eventually sold my stake in Dixie Kitchen to finance my move to Nashville and my third album, *Filth and Fire*, and left the restaurant business and moved to Music City to fully pursue my music. Over the last twenty years, I've released nine albums. Some

were self-financed and others recorded with major or independent record labels. I've known a lot of talented musicians who were never able to make a living at it, but I was fortunate enough to be able to do so and to be recognized for my work. I've received numerous awards, including the First Annual Independent Music Awards for best Folk/Singer-Songwriter Song, New Artist of the Year by The Americana Music Association, and Country Artist of the Year at the Gay and Lesbian American Music Awards. And my albums have been featured on the "Top 10" lists of many publications—four of them listed as the #1 record of the year—including *The New York Times*, the *Los Angeles Times*, the *Daily News*, and *Billboard Magazine*.

7. I released my most recent album, *Rifles & Rosary Beads*, in 2018. I wrote each song on the album with wounded U.S. veterans and their families through the nonprofit organization SongwritingWith:Soldiers. The album includes eleven deeply personal songs that reveal the untold and powerful stories that these veterans and their spouses deal with after returning home. I received the following awards and nominations for *Rifles & Rosary Beads*:

- awarded Best Album of the Year at International Folk Music Awards (2019);
- nominated for GRAMMY Award for Best Folk Album of the Year;
- named International Artist of the Year by The Americana Association UK;
- nominated for Album of the Year by The Americana Music Association;
- named #1 Singer/Songwriter Album of 2018 by the *Los Angeles Times*;
- "War After the War" was named Song of the Year by Malcolm Gladwell (NPR)

8. I have spent the last year and a half on the road. I've spent well over 300 nights in hotel rooms since the release of *Rifles & Rosary Beads*—on tour across the United States and

UK, Europe and Canada, including stops at The Edmonton Folk Festival, the famous Bluebird Café in Nashville, The London Roots Festival, the Hardly Strictly Bluegrass Festival in San Francisco, and hundreds more one night stands in small and medium sized rooms around the globe. I am a regular on the Grand Ole Opry. I've appeared on "CBS This Morning," and "I Love You, America, with Sarah Silverman."

9. My songs have been recorded by numerous artists, including Jimmy Buffet, Tim McGraw, Blake Shelton, Bobby Bare, Bill Chambers, Mike Farris, Candi Staton, Amy Helm, Bettye Lavette, and Kathy Mattea. My songs have also been used in television shows, including *Nashville* (ABC), *Injustice* (HBO), and *Yellowstone* (Paramount Network).
10. My music has been played on Sirius XM and on playlists for other streaming services, such as Pandora, Spotify, Amazon, Apple Music, etc.

II. Discussion

A. The Process of Putting My Music Out Into the World.

11. Being a working singer-songwriter is not as glamorous as people might think; in fact, it takes a lot of work. For the first decade of touring, I slept on stranger's couches, stayed in cheap, dangerous motels, and lived with no health insurance. My car had 200,000-plus miles on it, and I often played to nearly empty rooms. Even now, a good night for a folksinger like me is 150 or so people in the audience.
12. My process is a bit different each time, but I'd like to walk the Judges through the steps that it takes to put my music out into the world.
13. First, I write the songs. I write all of the music I record. Writing is hard work. It's rare that I know what the inspiration for my next song will be, but I typically try to capture the time I'm living in and draw on emotion from the world around me. It takes me roughly eighteen to twenty-four months to write an album's worth of songs. (I am lucky because I

am compensated as both a songwriter and a recording artist, which makes it easier for me to carve out a career.)

14. Once I have written the songs for an album, I hire a producer. To do this, I interview numerous producer candidates and send them songs to see if they're a good fit for the producer. This process is all about finding the right producer for the right song, and usually takes a few months.
15. Once I've selected a producer, I'll reserve a date with the producer and a recording studio, and find a backing band. Then we record the album.
16. I released four of my albums with record labels, but I released my last three albums—like my first few albums—on my own. To get these self-released albums out into the world, I have partnered with distributors (first CD Baby and now Thirty Tigers). For *Rifles & Rosary Beads*, Thirty Tigers handled the digital and physical distribution.
17. Because I'm not on a label I have to hire my own publicist. I retain a publicist for the few months before the album's release date, to publicize the album, and then the month or so after the release, to promote my tour.
18. I also hire a radio promoter for the four months before and after my album is released. That person promotes my recordings to small folk or Americana stations, or to college radio stations.
19. I also work with a business manager. She takes care of paying the people I work with, as I've just discussed, and collecting the revenue and royalties I receive from a variety of sources, including the digital streaming royalties that flow through SoundExchange.

B. The Centrality of Streaming and Its Impact on Artists

20. When people want to hear music nowadays, they largely do not purchase an album like they used to—they'll access it on a streaming music service. Although this model may

work great for top pop acts, for a working musician and songwriter like myself, it's been tough.

21. In the past, I would visit festivals and play shows and make a good portion of my living selling CDs—in particular to fans after my concerts—selling them one at a time to fans who came to the show, signing them, and talking to folks. But a lot of that revenue stream has dried up. Now I go to these festivals and sell very few CDs—and my income from most of the festivals themselves hasn't really increased—which is why receiving fair compensation from the streaming services has become even more important. The streaming royalties I receive, while important to my livelihood, haven't come close to making up for the lost revenue from physical sales.
22. The streaming royalties I receive from Sound Exchange are core revenue to me, more so every year as streaming becomes more and more dominant.
23. And although the way listeners access music has changed, what hasn't changed is the amount of passion, time, and energy that goes into my music. The only thing that's changed, from my perspective, is the amount of money I get out of it.
24. So I'm out on the road more than I'd like to be, and more than I would be if the royalties I received from streaming services were higher. I have to make a living. But I am almost 60 years old, driving myself from town to town, and I worry—how long can I do this?
25. I'm doing okay, but I'm concerned about the generation of artists coming up now—those that aren't hit-driven, that are just trying to make a living on their music. What can they sell to keep themselves going if their music is close to free? How do they survive when their lean early years are so lean that an artist can no longer pay their bills if they attempt to do music full time?

C. The Judges Should Raise the Royalty Rates So That The Artists' Receive Fair Compensation for Their Important Work.

26. I'm respectfully requesting that the Judges raise the royalty rates for non-interactive streaming services so that the recording artists—upon whose work the streaming services are based—are able to receive fair compensation for their work and to continue to make music.
27. Recorded music is so foundational to who we are as a society, fundamental to so many people's salvation. Some people are just hanging on by a thread. And music can be the thing that gives them hope and allows them to carry on. Through music, they realize they're not alone. Songs can often be more than just a song. You can take a room full of people and make them feel their kinship with music in a way that nothing else can. I believe songs are the great human connectors of our time, and they largely make it out into the world through recorded music. There's a sacred component to the art form, a spiritual component to music. It's more than entertainment; it's food for the soul. It truly matters.
28. I hear this nightly from people who listen to my music—that my music has an impact, that it does more than entertain. After shows, I meet with fans and most nights, someone will come up to me—often with tears in their eyes—and tell me how important my music and songs have been to them: they played it at their father's funeral, they held onto it when times were hard, it saved their life. That's an incredibly humbling and powerful thing to hear.
29. Through my work with veterans, I've come to especially appreciate how transformative music and songs can be for someone who has experienced trauma, just as it was for me. For example, I met retired Army Sgt. Joshua Geartz in 2015 through the SongwritingWith: Soldiers program. In 2003, while serving in Iraq, Josh had suffered a traumatic brain and

spinal cord injury when a roadside bomb exploded next to his vehicle. When he returned home to his wife and two small children he was wheelchair bound and suffering deeply from depression and PTSD. He attempted suicide once and had plans to commit suicide on the anniversary of the death of his best friend, who Josh had met in basic training. But music saved Josh. His wife enrolled him in a SongwritingWith:Soldiers retreat, we met there and became lifelong friends. We wrote a song together—"Still on the Ride"—about his best friend's death. The song appears on my album *Rifles & Rosary Beads* and I've had the privilege of performing it together with Josh (who plays a mean harmonica) many times on stage—including at the Grand Ole Opry and on an upcoming PBS Special on SongwritingWith:Soldiers. The last time we played together—just last month—Josh walked out on stage; he no longer needed a wheelchair. That's the power of music.

30. More talented artists should have the opportunity to make an impact through music, like I have. Most can no longer sell enough CD's at their little merch tables after the show to support themselves and their families. Their fans will find their music online, and stream it. The ownership model is just about over. Once artists receive fair compensation for their work, and can count on a sustainable income from the consumption of their work, the opportunity to thrive becomes possible.

I declare under penalty of perjury that the foregoing testimony is true and correct.

Date: Sept 20 2019

Mary Gauthier
Mary Gauthier

Proof of Delivery

I hereby certify that on Tuesday, March 10, 2020, I provided a true and correct copy of the Written Direct Testimony of Mary Gauthier to the following:

Google Inc., represented by Peter Schmidt, served via Electronic Service at pschmidt@kslaw.com

iHeartMedia, Inc., represented by John Thorne, served via Electronic Service at jthorne@kellogghansen.com

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National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via Electronic Service at ablin@fhhlaw.com

Signed: /s/ Steven R. Englund